STATE OF MICHIGAN

COURT OF APPEALS

SHANNON NIEZGOSKI and TODD NIEZGOSKI, Plaintiffs-Appellants, v QUALITY HOME CARE, INC. and PARKER MANOR, Defendants-Appellees.	UNPUBLISHED January 27, 2005 No. 250385 Ingham Circuit Court LC No. 03-000874-CZ

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition on the ground that the claim was barred by the applicable statute of limitations. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

> When reviewing a motion for summary disposition under MCR 2.116(C)(7), a court must accept as true the plaintiff's well-pleaded factual allegations and construe them in the plaintiff's favor. The court must look to the pleadings, affidavits, or other documentary evidence to determine whether there is a genuine issue of material fact. If no facts are in dispute, and reasonable minds could not differ regarding the legal effect of those facts, whether the plaintiff's claim is barred by the statute of limitations is a question for the court as a matter of law. However, if a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. [*Baker v DEC Int'l*, 218 Mich App 248, 252-253; 553 NW2d 667 (1996), rev'd in part on other grounds 458 Mich 247 (1998) (citations omitted).]

The material facts are not in dispute. Plaintiff Shannon Niezgoski[1] was employed by defendants until January 2003, when she was let go with a written explanation citing the lack of hours available. Plaintiff contacted Parker Manor in April 2003 to find out if there were hours available yet. She was told that "there were lots of hours, but to be honest, they won't hire you back." In May 2003, plaintiff filed this action for damages, alleging claims for violation of the Whistleblowers' Protection Act (WPA), MCL 15.361 *et seq*.

A person who claims a violation of the WPA "may bring a civil action for appropriate injunctive relief, or actual damages, or both within 90 days after the occurrence of the alleged violation of this act." MCL 15.363(1). Subsection 3(1) "is a statute of limitations" which, if not met, "bars an action under the Whistleblowers' Protection Act, regardless of the remedy requested." *Covell v Spengler*, 141 Mich App 76, 81; 366 NW2d 76 (1985). If the employee knows on the last day worked that her services are no longer required, the claim accrues at that time, notwithstanding the fact that the employer designates a later date as the effective date of separation. *Parker v Cadillac Gage Textron, Inc*, 214 Mich App 288; 542 NW2d 365 (1995). If no decision as to the employee's status has been made as of the last day worked, the claim does not accrue until the date the employee is notified of her discharge. *Collins v Comerica Bank*, 468 Mich 628; 664 NW2d 713 (2003).

In this case, plaintiff was not suspended, on vacation, or on a leave of absence when she left defendants' employ in January 2003. There is nothing in defendants' letter to indicate that her separation was anything other than permanent; she was not told that the lack of work was temporary or that she would be called back to work at a later date. To the contrary, she was advised that she may be eligible for unemployment benefits, which are payable when a person becomes unemployed for reasons other than voluntary separation or discharge for misconduct. MCL 421.28; MCL 421.29. Thus, although defendants did not actually use the words "terminated" or "discharged," plaintiff knew when she received defendants' letter in January that she would no longer be working for defendants at that time. Therefore, plaintiff's claim accrued on the last day worked. Because reasonable minds could not differ in concluding that plaintiff's claim accrued in January 2003, the trial court did not err in granting defendants' motion.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh

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[1] Plaintiff Todd Niezgoski filed a derivative claim for loss of consortium. Because the primary claim involved plaintiff Sharon Niezgoski's alleged wrongful termination by defendants, she will be referred to as plaintiff in the singular.